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March 25, 2015

**VIA FEDERAL EXPRESS**

Douglas Armstrong  
Head of Enforcement  
San Francisco Bay Conservation and  
Development Commission  
455 Golden Gate Avenue, Suite 10600  
San Francisco, CA 94102

RECEIVED  
MAR 26 2015

SAN FRANCISCO BAY CONSERVATION  
& DEVELOPMENT COMMISSION

Re: Point Buckler, LLC; Performance of Maintenance Activities Pursuant to  
Annie Mason Point Club Individual Management Plan, Club No. 801

Dear Mr. Armstrong:

Our office represents John Sweeney and Point Buckler, LLC, the owner of Point Buckler Island and the Annie Mason Point Club, a managed wetland located thereon. This letter is in response to your letter dated January 30, 2015. Initially, I would like to thank you and Commission Counsel John Bowers for your cooperation and assistance in obtaining the information necessary to respond to your letter. Our clients' obligations in complying with the various layers of regulatory regulation have not been made any easier by the activities of the Suisun Resource Conservation District ("SRCD"), the district that is charged with administering the Suisun Marsh Management Program ("SMMP"), which envisions the SRCD as a coordinating agency assisting landowners in preparing permit applications. Under the SMMP, the agency is to discuss any alleged violation of regulatory requirements with the landowner before BCDC. Only after it is determined that the landowner refuses to take action to address a violation is BCDC to be requested to take enforcement actions. In this case, no notice or discussion of alleged violations by SRCD with our clients was ever instituted; and, instead, SRCD went directly to BCDC and other agencies to report alleged violations. Our clients, as landowners in a marsh, are entitled to all of the services and assistance guaranteed of the regulatory agencies as well as being bound by all of the appropriate regulations. Your approach, in contrast to SRCD's has appeared cooperative.

In responding to your letter, our response will address the various paragraphs which are divided by subject matter as follows:

1. Background: In this paragraph you provide a description of the Suisun Marsh Protection Act ("SMPA") as being "the primary land use law" in the marsh,

partially administered at the local level through the SMMP and the Local Protection Program ("LPP") as well as the individual management plans ("IMPs"). Apparently, each of the clubs have IMPs which differ based upon topography, location and context. In your discussion you failed to mention the Suisun Marsh Protection Plan, approved by BCDC in 1976 (prior to the adoption by the legislature of the SMPA) and the Adaptive Habitat Management Plan Template prepared by SRCD to provide an overview and background, describing existing conditions and operations on managed wetlands in the marsh as well as providing wetland management guidance to landowners. Both of these documents have some relevance to the matters discussed in your letter.

At the outset, we are somewhat puzzled by advice received from BCDC staff in 2011 indicating that both Chipps Island and Point Buckler Island were outside of BCDC jurisdiction. I have attached as Attachment A a memorandum from John Sweeney relating to series of communications with district staff in which his permission was sought to relocate nonconforming docks from a location in Richmond to Chipps Island because that was outside of BCDC jurisdiction. The BCDC Enforcement chart for 2011 lists this as a successful enforcement action and reiterates that the relocation of the offending docks from their Richmond location was to a site outside of BCDC jurisdiction. As indicated, the representations from the owner and BCDC staff at the time were that these docks would be dismantled and moved to an upland location for disposal. Instead, approximately one-half of the dock structures broke loose during a storm in 2014 and were floating free in Honker Bay. Mr. Sweeney was forced to secure these floating structures and they are now resting on Point Buckler, a separate notice of violation that we will address later in this letter. We are not sure on what basis Chipps Island and/or Point Buckler Island could have been thought to be outside of BCDC jurisdiction (although Point Buckler is probably the highest point in the marsh, averaging six feet or more above sea level). In any event, for the purposes of this letter we are assuming that Point Buckler is within BCDC jurisdiction.

2. Managed Wetland or Tidal Marsh: This section is puzzling to us and seems to assert that despite the fact that Point Buckler Island and the Annie Mason Point Club clearly constitute a "managed wetland" under the definitions set out in the SMPA and that the club has been managed and hunted for ducks from long before the adoption of the SMPA through today, somehow the property (either through failure of implementation or recent construction of improvements) no longer satisfies the definition of managed wetland and, instead, constitutes a "tidally influenced marsh" and is thus not entitled to the "safe harbor" maintenance provision protections of Public Resources Code section 29501.5. This contention is incorrect.

Public Resources Code section 29105 defines wetlands as "those diked areas in the marsh in which water inflow and outflow is artificially controlled or in which water fowl food plants are cultivated, or both, to enhance habitat conditions for water fowl and other water associated birds, wildlife or fish, regardless of whether such areas

are used for hunting or fishing or non-consumptive uses such as nature study, photography and similar passive wildlife activities . . .".

Point Buckler Island is perhaps unique among managed wetlands in that due to its height the problem with providing water to its interior is a more serious one than removing water naturally flowing into the interior. However, the IMP shows clearly that there existed at the time of certification of the IMP two tidal gates allowing entry and circulation of water into the interior ditch system. Those two tidal gates remain although the easterly gate has failed to function over the years and is frozen in place. One of the repairs which our clients intend to undertake to assist in the functioning of the managed wetland would be to replace that gate when requisite permits are obtained. In its current condition, water is allowed to flow into the interior of the island in the month of October during high tides and to remain there until the change in weather in the spring and summer dry it out and allow water to flow back into the surrounding Grizzly Bay. When the interior of the island dries sufficiently, our clients disc the property to assist in the cultivation of water fowl foliage and have in their brief ownership planted over 12 trees to assist in attracting water fowl to the island. Thus, the operation of the island has always constituted it as a managed wetland under both elements of the definition contained in the SMPA. As Attachment B, I am attaching correspondence between BCDC and a prior owner of the island from 1985 through 1989 as well as page 103 from the Department of Water Resources ("DWR") 1984 Plan of Protection for the Suisun Marsh. The DWR document clearly shows that the Annie Mason Club was a managed wetland and goes on to recommend that a diesel pump be installed to operate when water quality was low. In fact, that pump was installed and remains in place today. The BCDC correspondence addresses the necessity of levee repair to assist in ensuring satisfactory water quality, an important aspect of a managed wetland.

Attachment C contains a description of all of the work which our clients have done to improve the interior ditches and levees and to put the Annie Mason Point Club into a condition that can be more successfully and effectively managed. None of these activities requires a Marsh Development Permit since they are consistent with the IMP. Also, none of the filling and levee maintenance activities cut off any tidal inflow points into the interior of the island. Both points still exist and once permission is obtained, the non-functioning eastern tidal gate will be replaced. All of the work performed on Point Buckler was scrupulously limited to those areas where the levees and the interior ditches had existed pursuant to the IMP. The result of the work is to greatly enhance the manageability of this wetland and to ensure its desirability for water fowl hunting during the next season. Once the owners have determined what sort of permit is necessary to replace the damaged floodgate, that floodgate will be replaced and the water circulation on the island and its desirability as a managed wetland will be greatly enhanced.

Your letter seems to contend that if the wetland is not managed precisely in accordance with the IMP, then it loses its status and the statutory protection allowing maintenance activities. That is not the case. Public Resources Code

section 29422 provides that at least once every five years after certification of an IMP, BCDC is to review the certified local protection program of which it is a part and determine whether the program is being effectively implemented. If the Commission determines that the LPP or any component is not being carried out in conformity with the SMPA or the SMMP, then it is to submit requested corrective actions to the local agency. No such notices have been sent relating to Annie Mason Point Club and the SRCD files contain correspondence back and forth between BCDC and the prior owners which indicates that dissatisfaction with the management activities had been expressed. To the contrary, the correspondence shows Annie Mason has always been a managed wetland.

3. Permit Requirements: In this section you state that the SMPA requires a marsh development permit for the activities specifically described in the following section that is entitled "Description of Violations". As pointed above, this is incorrect as to most of the alleged violations because of the "safe harbor" provisions of Public Resources Code section 29501.5. In all cases, the levee and ditch repair work was performed in areas shown as previously existing in the IMP with the exception of a short area of ditch and levee in the northwesterly section of the island where a large portion of the island had eroded. There, the levee was reconstructed in accordance with SRCD's suggestion for repair set out in the SMMP. As such no Marsh Development Permit is necessary for this work. We would be happy to accompany BCDC staff members to the island again and point out precisely where and at what time the repairs have been made. We are convinced that once you understand that the work coincided with the IMP, you will agree that the result is a club which can be managed much more effectively.

4. Description of Violations: Your letter indicated the following alleged violations.

(a) Installation of Approximately 288 Square Foot Dock on the Eastern Portion of the Island in Annie Mason Slough: As indicated above, these docks at the request of BCDC staff were relocated from Richmond to Chipps Island. The understanding was that the owners and BCDC would cause the demolition of these docks and their removal to appropriate landfills. Instead, nothing was done on them and the portion currently existing at Point Buckler broke loose during a storm and were brought to Point Buckler with the understanding that Point Buckler was beyond the jurisdiction of the BCDC. Since the relocation to Point Buckler, State Lands Commission has approved and executed a lease for their location.

(b) and (c) These Items Include the Unauthorized Placement of Two Mobile Army Trailers and Two Shipping Containers: Our clients had assumed that these did not require BCDC permits since virtually every duck club and managed wetland in the marsh contains these structures. See Attachment D which contains a series of photographs showing similar structures on other clubs. Our clients assume that no permit was required for these activities. If permits are required and cannot be obtained through the Solano County Planning Department, then they will

promptly file applications with BCDC to legitimize these and, if necessary, the docks.

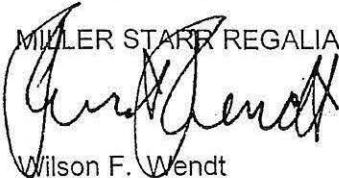
(d) Blockage of Major Tidal Channels: No tidal channels were blocked. These allocations are simply incorrect. As pointed out previously, the reconstruction work done on Point Buckler greatly assists in the passage through tidal channels of water into the interior of the island. The one tidal gate is blocked and will be replaced if allowed in the future. However, none of the tidal channels that you mention in this section have been blocked by our clients' activities.

(e) Work Has Been Conducted Outside of the Appropriate Work Windows for Endangered Species: Our clients are not aware of any habitat area on their property that would apply to these species listed. In any event, they will be filing an application for a permit under the Regional Permit RPB3 issued by the U.S. Army Corps of Engineers and will discuss with USACE whether any mitigation might be required because of activity within or outside of these windows.

Conclusion: The rest of the letter goes on to discuss possible enforcement actions, extends an offer to meet and discuss the project and the alleged violations. We think that suggestion is entirely appropriate and request that the meeting be set up. As I advised you by telephone, our clients have ceased all development activities on Point Buckler and will not resume those unless and until an understanding is reached with your agency. Again, we appreciate your cooperation and look forward to working with you cooperatively to address these issues.

Very truly yours,

MILLER STARR REGALIA



Wilson F. Wendt

WFW:jj

cc: Clients  
John Bowers, BCDC Staff Counsel  
Solano County Planning Department, Attn: Mike Yankovich  
Supervisor Linda Seifert  
Solano Resource Conservation District